



Agenda Date: 1/9/04
Agenda Item: 8A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

AUDITS

IN THE MATTER OF THE FOCUSED AUDIT OF)
ELIZABETHTOWN GAS COMPANY, NUI)
UTILITIES, INC. AND NUI CORPORATION)

ORDER

DOCKET NO. GA03030213

(SERVICE LIST ATTACHED)

BY THE BOARD:

At its March 20, 2003 agenda meeting, the Board of Public Utilities ("Board") directed the initiation of a focused audit of Elizabethtown Gas Company ("Elizabethtown" or "ETG"), a gas public utility and division of NUI Utilities, Inc. ("NUI Utilities"). The Board initiated the focused audit of NUI Utilities and its parent holding company, NUI Corporation ("NUI"), and all of its subsidiaries (collectively, all of the foregoing are at times referred to herein as "the company"). The Board initiated the focused audit because credit downgrades of the senior unsecured debt of NUI and NUI Utilities, as well as concerns raised during a competitive services audit of Elizabethtown in Docket No. GA02020099, substantiated the need for an in-depth review of the financial practices of the company and its affiliates.

The Board has received Liberty Consulting, Inc.'s ("Liberty") Interim Focused Audit Report, which has been reviewed by the Board and its Staff. By Order dated December 18, 2003, the Board acknowledged the release of this report, which can be accessed on its website (www.bpu.state.nj.us).

Further, in fulfilling its duties to the ratepayers and the public under N.J.S.A. 48:2-1 et seq., the Board directed in its Order dated December 11, 2003 that certain measures must be immediately implemented to ensure safe, adequate and proper service at just and reasonable rates. These measures were in addition to the directives issued by the Board in its prior Orders and are in addition to directives subsequently issued by the Board in its Order dated December 18, 2003. One of these measures addressed the critical issue of the termination of any relationship between NUI Energy Brokers ("NUIEB") and NUI Utilities and Elizabethtown Gas. Specifically, because of specific concerns related to NUIEB as well as concerns with respect to corporate governance, the Board ordered NUI Utilities and ETG to cease purchasing gas from NUI Energy Brokers, Inc., and to purchase gas through a plan to be provided to the Board by noon on January 2, 2004, to be effectuated subject to Board approval by January 8, 2004. This plan was also to include any transfers to NUI Utilities or ETG of NUI Energy Brokers, Inc. personnel.

NUIEB currently serves as Elizabethtown's agent for (1) purchasing gas, and (2) managing, in the short term, Elizabethtown's utilization of its pipeline, storage and peaking contracts/assets. Elizabethtown also has a contract to purchase certain firm gas supplies from NUIEB during the

current winter period. NUIEB also arranges financial transactions on behalf of Elizabethtown to enable the Company to implement its Gas Procurement Strategy and Plan ("GPS&P") as filed with the Board. On December 30, 2003, Elizabethtown agreed with NUIEB to terminate the agency agreement between the parties.

In response to the Board's December 11, 2003 Order, NUI Utilities made a compliance filing with the Board on January 2, 2004. In addition, the company filed a request, in accordance with the Open Public Records Act ("OPRA") (N.J.S.A. 47:1A-1, et seq.) and N.J.A.C. 14:1-12, et seq. of the Board's rules, for confidential treatment of certain portions of the compliance filing.

NUI Utilities proposes to: (1) enter into an agreement with NJR Energy Services Company ("NJRES") to commence serving as Elizabethtown's agent for purchasing gas, and managing, in the short term, Elizabethtown's utilization of its pipeline, storage and peaking contracts/assets no later than February 1, 2004; (2) put NJRES in the position of being able to execute the hedging program that Elizabethtown has filed with the Board by entering into financial transactions on Elizabethtown's behalf by February 1, 2004; and (3) fulfill its obligation to purchase gas from NUIEB under its existing firm index-based contract through February 29, 2004. In addition, the proposal includes interim steps to be taken prior to the effective date of the gas supply/asset management arrangement. Specifically, Elizabethtown proposes that from and after January 1, 2004, Elizabethtown /NUIEB will credit to Elizabethtown's customers 85% of all positive net margins generated from NUIEB's transactions for Elizabethtown, as it presently does, and will now credit to Elizabethtown's customers 85% of all positive net margins generated from all of NUIEB's non-utility wholesale sales of gas or capacity. Therefore, NUIEB will have no greater incentive to enter into a transaction for its own account than it will to enter into a transaction for Elizabethtown's account. Moreover, this sharing of margins will not expose Elizabethtown's customers to any losses by NUIEB. Customers will only benefit from gains; they will not bear the risk of loss. The interim steps will also include close monitoring of NUIEB's activities. Further, the plan provides that any company which shall succeed by purchase, merger, or consolidation to the properties rights and obligations of NUI Utilities, or of NJRES, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under the plan. If there is a sale of NUI Utilities, the plan contains provisions under which it can be continued or terminated by NUI Utilities' successor.

In order to identify possible replacements for NUIEB, representatives of Elizabethtown met with several gas suppliers. Elizabethtown asserts that NJRES would be the best choice to enable Elizabethtown to cease using NUIEB as its agent as rapidly as possible. In addition, Elizabethtown is confident of NJRES' ability to ensure Elizabethtown's ability to meet its purchasing obligations. NJRES has extensive knowledge of northeast gas portfolios, and possesses the infrastructure necessary to administer Elizabethtown's portfolio. In addition, NJRES possesses a unique knowledge of wholesale and retail market conditions in and around New Jersey.

With regard to the terms of the agreement with NJRES, Elizabethtown asserts that the fee to be paid to NJRES under the proposed contract is reasonable because it (1) imposes no cost on customers, and (2) is tied to customer benefits. Elizabethtown asserts that its agreement with NJRES achieves the same results for Elizabethtown's customers as would be obtained through competitive bidding.

DISCUSSION AND FINDINGS

In response to the BPU's directives in its December 11, 2003 Order, in light of the issues which have arisen with respect to the activities of NUIEB, and in order to ensure the continued provision of safe, adequate and proper gas service to its customers at just and reasonable

rates, NUI Utilities reached out to the gas supply community and has developed a plan with NJRES to secure gas supply for the benefit of Elizabethtown's customers.

The Board has reviewed the plan proposed by NUI Utilities and believes it to be a reasonable means for addressing Elizabethtown's short-term gas supply needs, which will enable it to provide safe, adequate and proper service to customers during the current heating season, to respond expeditiously to concerns involving the performance of NUIEB, and to mitigate the consequences of a mid-heating season shift in resources dedicated to meeting utility supply needs. However, in order to ensure that gas supply arrangements remain as competitive as possible, and to allow for transparency of the gas procurement process, the Board **DIRECTS** NUI Utilities to file a procedure by January 28, 2004 for a competitive procurement for the provision of gas supply management services for the period commencing April 1, 2004 through March 31, 2005, subject to Board approval. The procedure should be an open competitive one conducted by NUI Utilities subject to Board review and approval.

The Board recognizes that NJRES has worked with NUI Utilities to develop a plan that could be implemented in the timeframe required and will incur start-up as well as ongoing costs to provide such services. Therefore, in the event that NJRES is not selected to continue to provide services to NUI Utilities as a result of the bid process, the Board believes that NJRES should be adequately compensated for the time and expenses it will incur in providing these services to NUI Utilities. The plan presently provides for an early termination fee of \$120,000 in the event that the contract is cancelled due to a sale of NUI Utilities. The Board believes that an early termination fee should also be applied in the event that NJRES is not selected as a result of the bid. Therefore, if NJRES is not selected as a result of the competitive bid, NUI Utilities shall increase the minimum amount payable under the plan by a total of \$120,000. Similar to the fees presently payable under the plan, this \$120,000 shall not be paid for by Elizabethtown's customers.

Further, the Board **FINDS** that there are additional specific areas of the plan which require modification. Accordingly, the Board **AUTHORIZES** NUI Utilities to proceed with the plan as filed, with the bidding modification described above and the following additional modifications:

1. No person shall be transferred to NUI Utilities from NUIEB without the prior review and written consent of the Director of the Board's Energy Division.
2. There shall be no direct or indirect reporting to NUIEB, nor any involvement by NUIEB in compensation determinations, nor common NUIEB / NUI Utilities office locations for any personnel engaged in the NUI Utilities gas supply function, effective January 12, 2004. However, NUIEB shall continue to cooperate with ETG and NJRES to ensure the continuity of service for Elizabethtown's customers and to provide a smooth transition until such time as NJRES assumes full control of ETG's gas supply management services, which shall be no later than February 1, 2004.
3. NUI Utilities shall provide monthly reports to the Board containing pipeline utilization data, the weighted average cost of gas for the month, the storage plans for the upcoming summer, and an indication of any outstanding issues there may be between NJRES and NUI Utilities.
4. NUIEB, NUI Utilities and NJRES shall provide immediate access to such documentation to each other, the Board Staff and the Ratepayer Advocate as is necessary to confirm the arm's-length and market-competitive nature of all transactions affecting Elizabethtown.

5. There is no express or implied BPU approval of any costs incurred under prior, existing, or revised arrangements for managing Elizabethtown's gas portfolio and all costs, including gas supply costs, incurred shall be subject to such BPU prudence, reasonableness and other reviews and audits in the appropriate proceedings as if this plan had not been submitted to or reviewed by the BPU.
6. NJRES, any subsequent asset manager acting for Elizabethtown, and Elizabethtown shall have the option to take back the Transco WSS storage now being used by NUIEB on terms that require Elizabethtown to pay no more than the forward-going costs associated with such storage.
7. Elizabethtown may continue to purchase gas through February 29, 2004 under the one existing contract that is described in NUI Utilities' filing with NUIEB provided that NJRES determines that this contract represents a market-competitive and otherwise prudent element of Elizabethtown's supply plan for the current winter season. In the event that it does not, purchases shall cease within three days of written notice from NJRES with no liability to Elizabethtown for early termination.
8. NUI Utilities shall provide all necessary documentation to NJRES in order for NJRES to effectively serve as Elizabethtown's agent to the benefit of Elizabethtown's customers. NJRES and NUI Utilities shall at all times during the term of the gas asset management agreement maintain administrative "firewalls" sufficient to limit NJRES' access to only NUI Corp/NUI Utilities operating information that is required to fulfill its gas supply contractual obligations.

The Board **DIRECTS** NUI Utilities to file a copy of the final contract between NUI Utilities and NJRES with the Board within 10 days of this Board Order.

The Board reserves the right to take further action in this matter, as may be hereafter determined to be appropriate.

DATED: 1/14/04

SIGNED

JEANNE M. FOX
PRESIDENT

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST: **SIGNED**

KRISTI IZZO
SECRETARY